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Paper No. 11

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OFFICE OF PETITIONS

In re Application of
Michael Allen Siracki
Application No. 10/015,199
Filed: December 11, 2001
Atty Docket No. 1030-15203

DECISION GRANTING
PETITION

This is a decision on the "Petition to Correct Correspondence Filing Date For "Date-In" Incorrectly Entered or Omitted on Express Mail Label (37 C.F.R. 1.10(d))," filed May 13, 2003, requesting that the above-identified nonprovisional application be accorded a filing date of December 11, 2001, rather than the presently accorded filing date of October 11, 2001. This petition is properly treated under § 1.10(c)¹. Furthermore, the petition includes *prima facie* evidence in the form of a properly itemized date stamped return postcard establishing that the petition should be considered timely filed on February 27, 2002².

Applicants maintain that the above-identified application was deposited in the Express Mail Post Office to Addressee service of the USPS, pursuant to § 1.10 on December 11, 2001, and thus, is entitled to a filing date of December 11, 2001. In support thereof, applicant submits *inter alia*:

- a "statement"³ by patent attorney Marcella D. Watkins as to when the discrepancy in filing date was discovered and to show that the petition was filed promptly thereafter;
- a true copy of the "Express Mail Post Office to Addressee" mailing label No. EV 051432711 US; and

¹ § 1.10(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, ...

² A review of the PALM history of the application reveals that the petition fee was charged March 2002, with a mail room date of February 27, 2002.

³ There is no separate statement by attorney Watkins specifically stating when the discrepancy was discovered. Nonetheless, on petition at para 4, attorney Watkins indicates that the discrepancy was discovered upon receipt of their return postcard (on or about January 2, 2002 according to the stamp on the postcard) . The petition was filed promptly thereafter.

- a true copy of the Patent Application Transmittal Letter, bearing "Express Mail" mailing label number EL 051432711 US thereon.

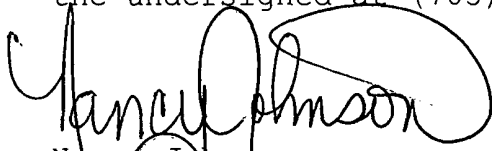
Having reviewed the evidence, it is concluded that petitioner has shown a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by other official USPS notation. The petition was filed promptly within the meaning of § 1.10(c)(1). The transmittal submitted is a true copy of the transmittal present in the application file, and both bear the "Express Mail" mailing label number. Thus, petitioner has shown that this number was placed on the correspondence prior to the original mailing date. The "date-in" on the "Express Mail" mailing label appears to be December 11, 2001. In addition, the label bears an official USPS date stamp of December 11, 2001. In addition, petitioner has submitted a copy of their return postcard receipt, bearing a date of receipt stamp of December 11, 2001 to the papers assigned application No. 10/015,199.

In view thereof, the petition is GRANTED.

No petition fee is necessary. The petition fee has been refunded to Deposit Account No. 03-2769, as authorized.

The application is being returned to the Office of Initial Patent Examination for correction of the filing date to December 11, 2002, and issuance of a corrected filing receipt.

Telephone inquiries specific to this decision may be directed to the undersigned at (703) 305-0309.



Nancy Johnson
Petitions Attorney
Office of Petitions